

Bill 251 – an early view of its major changes and consequences

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these inspections. SW-friendly organizations in Ontario are concerned that these changes will pose greater risks by exposing workers to more aggressive law enforcement, forcing them to abandon tried-and-true safety practices to avoid violating these new offences, and encouraging businesses to discriminate against sex workers to ensure their own compliance with the new law.

Because the *Combating Human Trafficking Act, 2021* is not yet in force (and neither are all the changes it makes to these other statutes), we don't yet know all of the potential effects of these legislative changes and the best defences against them. This resource will focus on explaining these changes, how the new law interacts with existing regulations, and what this all might mean for sex workers living and working in Ontario.

The Combating Human Trafficking Act, 2021 previously known as Bill 251, brings into effect some major changes to the law. It repeals the old *Hotel Registration of Guests Act* and replaces it with a new version, called the *Accommodations Sector Registration of Guests Act, 2021*. It also introduces new provisions to *Child, Youth and Family Services*

Overview:

The new Bill 251, or the *Combating Human Trafficking Act, 2021*, makes several changes to the existing laws that effect sex workers in Ontario. It creates a set of new offences, all of which are punishable by fines — some of up to \$5,000, and some of up to \$50,000. It also grants the Ontario government broad powers to regulate and inspect various businesses, and punishes individuals or corporations who fail to comply with police orders regarding

Act, 2017, and makes changes to the existing *Prevention of and Remedies for Human Trafficking Act, 2017*. Finally, it introduces a new law called the *Anti-Human Trafficking Strategy Act, 2021* which makes new offences and regulations at the discretion of the Minister.

Note:

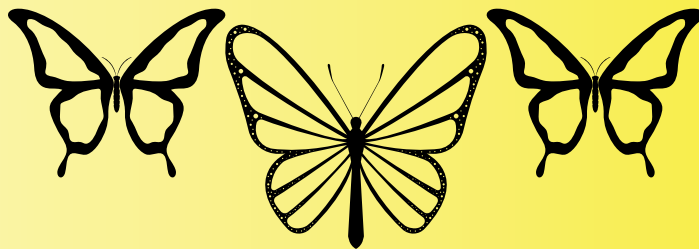
When discussing the changes made by the *Combating Human Trafficking Act, 2021*, this resource will reference the specific sections in each individual statute.

This resource also uses the words “Act,” “statute,” “law,” and “legislation” somewhat interchangeably. Legislation is law that is created by parliamentary government (eg the parliaments of Ontario or of Canada). It takes the form of a statute, which is what we call the general category of written legislation. All of those laws start off as Bills, which become Acts once they’re passed and implemented; the final version of the law will usually have the word “Act” in their titles (eg Bill 251 is now called the *Combating Human Trafficking Act, 2021*). For our purposes, these terms all mean virtually the same thing.

Statutes are made up of specific numbered sections, which are also called “provisions.” Statutes also contain regulations, which are an extra set of rules created by government bodies to help interpret and expand upon the Acts, which are legally enforceable.

“Offences” are laws or regulations that say what to do or not do, or else you risk breaking the law. A regulatory offence is not a crime,

per se, but they are similar to crimes — you may not go to jail, but you will have to go to court, and you may to deal with fines or other legal consequences.



Abbreviations:

CHTA — *Combating Human Trafficking Act, 2021*

AHTSA — *Anti-Human Trafficking Strategy Act, 2021*

ASRGA — *Accommodations Sector Registration of Guests Act, 2021*

CYFSA — *Child, Youth and Family Services Act, 2017*

The ASRGA

According to ASRGA s.6(1), accommodations sector owners and workers who “knowingly and wilfully” fail to maintain a full and accurate register may be convicted and fined up to \$5,000; those who fail to comply with law enforcement orders to hand over register information may also be convicted and fined up to \$5,000. ASRGA s.6(2) makes it an offence for guests to give false information for the guest register, with a fine upon conviction of up to \$5,000.

When booking a hotel room or Airbnb, you may be asked to provide your legal name and address. At this time, no other information is

mandatory. So long as the information you provide for guest registration is true and accurate, you have satisfied the basic requirements to avoid liability.

Liability for this kind of offence can be disproven by showing “due diligence.” A person who has done “due diligence” under the law has ensured that they’ve taken all reasonable steps to avoid the offending conduct; their negligence is not to blame, and instead, the offence was the result either of some genuine, honest mistaken belief, or by forces outside of your control. This principle should be front of mind when making decisions under the provisions of this Act.

If you are able to, it is may be safer to share personal information separately from clients or others. There are many reasons why sex workers may want to hide their legal names and addresses from clients or colleagues, and you are not legally required to share that info with anyone but a hotel worker for the purpose of guest registration, or law enforcement. Aim to avoid having this information accessible to anyone else.

If you are not the one making the hotel or Airbnb booking, then the person doing so is liable under ASRGA s.6(2) for giving false information. You may be able to avoid liability for this offence if you have taken all reasonable steps to ensure that you gave them the right information, and that the matter was out of your hands. If a friend or colleague is handling the booking for you, you may decide that it is legally strategic to give them that information and explain to them why — that

way, if any issues arise, you can point to this preventative step as evidence of your due diligence to avoid liability. If a client is making the booking, then you may decide that the potential legal benefits do not outweigh the privacy and safety risks of providing them with that information. It is unclear whether this will impact your liability down the road; you are likely to be helped if you can prove lack of knowledge or foresight in the offending conduct, especially as it was not your personal actions that violated the provision.

Because the new law also has consequences for hotel workers who don’t fully participate in police inspections, it creates incentives for hotel and other accommodations sector workers to profile and discriminate against sex workers. For these reasons, you will likely have to move even more carefully when working in hotels, and take extra steps to mitigate risk of discovery.



The AHTSA

The most worrying dimension of the AHTSA is in the broad regulatory, inspection, and enforcement powers it grants to the Ontario government in the interest of “preventing human trafficking.” According to AHTSA s.6(1), the Ontario government may create regulations under this Act that mandate employee training, information collection and disclosure, and police cooperation, applying to “specified employers” (as yet unnamed), and to any

business that engages in advertising or hosting of sex work.

Precisely who will be doing these inspections, what they're expecting, and where they're inspecting is still unclear; it isn't specified in the statute, and the Minister is empowered to come up with the details later on in the form of regulations. However, if past instances of inspections are any indicators, we can expect to see the consequences of this in the form of more frequent inspections of sex work-related workplaces, and even non-sex work workplaces where municipal licensing and bylaw enforcement is already very active, such as in body rub parlours and holistic centres.

While this aspect of the law will remain consistent — bylaw inspection is already commonplace and already very invasive — the purpose of this statute is to lay out a broad and comprehensive legislative agenda around inspecting and enforcing human trafficking; for this reason, we can expect that the same treatment experienced by workers at body rub parlours or holistic centres might start happening in other establishments as well, and become the norm across the board in Ontario.

Some of the most concerning powers granted to these inspectors would include warrantless entry to any place other than a dwelling (ie someone's home) for the purpose of determining regulatory compliance; the power to demand and copy records/information relevant to their inspection; the power to question individuals in the course of their inspections, and to do this questioning

apart from others; the power to compel answers, essentially relying on the law to "force" someone to answer questions.

In a general sense, every one of these powers is a major privacy violation, and might be grounds for a Charter s.8 challenge. As well, AHTSA s.10(b) gives the government the power to determine the legal process for adjudicating these offences in court, which is itself a legally fraught and complex area also likely grounds for a Charter s.11 challenge. In the meantime, however, in light of all these changes and intrusions, it is especially necessary to be careful about informational privacy by limiting who has access to your documents outside your home. AHTSA s.8(1) states that violation of these new regulations in the form of obstructing inspections are considered to be offences, which may be punishable by fines of up to \$50,000 for an individual or \$100,000 for a corporation.

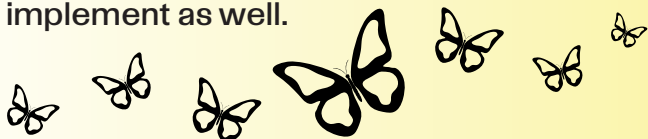
While the stated purpose behind these changes is to criminalize workplaces that participate in trafficking, the huge fines associated with them effectively incentivizes employers, businesses, and others to exclude and refuse people who they might profile as sex workers, out of an interest in avoiding liability. It also has the downstream effect of making it so difficult and risky to manage a smaller business that might be vulnerable to such violating inspections that it will force many adult entertainment establishments, body rub parlours, and holistic centres to shut down — opening up space for larger entities where workers have less bargaining power and fewer protections.

The CYFSA

These new rules are designed to target businesses and bosses, but their possible effects on workers themselves in terms of legal liability is unclear. At minimum, we can expect to deal with more law enforcement interactions and greater consequences for failure to comply.

To prepare for these changes, it may be wise to ensure strict compliance with existing licensing and standards at one's workplaces, and to switch to more secure forms of communication with colleagues and clients, to help reduce the risks associated with unannounced inspection.

These offences also appear to be the same kind as the new ASRGA offences, meaning that the only available defence is due diligence — in other words, you must be able to demonstrate that you took all reasonable steps to prevent the offending conduct. Because it is not yet entirely clear what kind of conduct will be captured by these regulatory offences, it is hard to determine which specific actions should or should not be taken, outside of a general demand to make oneself and one's workplaces available for inspection. Training new and old employees, making relevant health and safety and anti-trafficking information easily available, and ensuring that all workers are aware of their rights and some useful phrases to mitigate concerns over trafficking in the workplace may be helpful elements to implement as well.



The CHTA also introduces changes to the CYFSA, including a new provision, s.77.1. That provision confers power on law enforcement and social services agencies to apprehend and detain suspected youth human trafficking victims aged 16-17 years old. It is the only piece of legislation in the province that permits the police to detain the victim of a crime. It is a severe and concerning violation of Charter s.7 rights.

The new provision enables police to relocate and detain a youth for up to 12 hours for the stated purpose of offering services and supports. In order to trigger this power, the police (or social services worker) must seriously believe that the youth is in need of protection, and also, at least one other aggravating factor must be in play. These include evidence that the youth has suffered physical harm, is dependent on substances, is experiencing housing precariousness, is without citizenship, is mentally or physically disabled, or their finances and/or personal effects are being controlled by a person suspected of trafficking them.

It's worth acknowledging that many of these factors are likely to be reasons why an individual would fear police interactions, especially as a young person. It is unlikely that victims (or others) who are detained according to this legislation will experience it as a protective measure, and not as traumatic punishment.

It is unclear to what extent the legislation understands social, familial, or collegial relationships with sex workers as evidence of “trafficking” for the purposes of CYFSA s.77.1. The Act thus poses new risks to adult sex workers with 16-17-year-old friends or colleagues, and to agencies who assist or advise 16-17-year-old community members or service users. Organizations and individuals who work with and spend time with youth should be trained in how to communicate these risks and how the youth themselves can communicate their situation in the course of a police or social services interaction. Similarly, social services organizations should be proactive in engaging with sex worker advocacy agencies to understand how to serve vulnerable youth in these situations without risking police escalation.

Note on immigration law interaction:

While sex work is technically not illegal in Canada, it is prohibited for individuals without permanent resident status or citizenship; participating in sex work violates the terms of all other visas, and thus can lead to deportation from Canada.

As many community organizations have already noted, police interactions tend to have cascading effects. Inspections by bylaw officers or check-ins related to trafficking concerns may result in calls to the Canadian Border Services Agency, which may result in immigrant detention and removal from Canada. For these reasons, it is important to mitigate risks of the initial police interaction

wherever possible, even if you might be able to defend yourself at trial.

What are the possible avenues for challenging this legislation?

It is far too soon to say what kind of legal responses will be necessary or realistic. However, we can identify some preliminary avenues to consider for further research.

There are numerous potential constitutional violations in this legislation. This is true not only in the realm of Charter rights, such as s.7, s.8, and s.11 – the rights to life, liberty, and security of the person; privacy; and a fair trial, respectively. As well, the constitution limits what kind of lawmaking is available to different levels of government. Criminal laws belong to the federal government, not to provincial lawmakers. Arguably, the broad sweep of regulations included in this new legislation, especially the AHTSA, moves from the regulatory agenda into the territory of criminal law; it uses the power of the state to enforce morality and curtail undesirable behaviour with severe and stigmatizing consequences, in the explicit and stated interest of preventing and responding to the crime of human trafficking. For these reasons, a judge might find the provisions that empower law enforcement to inspect businesses and request information and detain individuals at length to be ultra vires, meaning that they fall outside of the valid lawmaking jurisdiction of the provinces, in addition to their violation of Charter rights.

Maggie's Toronto Sex Workers Action Project

WHO WE ARE

We are one of Canada's oldest by and for sex worker justice organizations. Our mission is to advocate and fight for the rights of all sex workers in society, by offering a wide variety of services, educational resources, and creating community so that we may live and work with health, safety, and dignity. We believe in the full decriminalization of sex work and believe it is a crucial step towards sex worker justice.

We offer supportive programming for sex workers including weekly drop-ins, harm reduction services, outreach programs, legal supports and broader advocacy including food security efforts, public health initiatives and educational workshops for sex workers.

Learn more about our work and upcoming projects at maggiesto.org or check us out on instagram @maggiestoronto. You can reach us through email at info@maggiesto.org.

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